

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1619

Heard at Montreal, Wednesday, February 11, 1987

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Claim of Locomotive Engineer G. Krystia, Capreol, dated January 13, 1986, alleging violation of article 16.1 of Agreement 1.1.

JOINT STATEMENT OF ISSUE:

On January 13, 1986, Locomotive Engineer G. Krystia was ordered for Train 375, Capreol to Foleyet, with an on duty time of 1830. At 0125, January 14th, Train 375 had not departed from Capreol and Mr. Krystia was notified that he was cancelled.

Mr. Krystia submitted a time claim for 241 miles, which claim included all road miles from Capreol to Foleyet. He was paid, instead, 100 miles.

The Brotherhood contends that, in cancelling Mr. Krystia, the Company violated article 16.1. As a result, the Brotherhood further contends that Mr. Krystia is entitled to the difference between the 241 miles originally claimed and the 100 miles actually paid.

The Company disagrees with the Union's contentions and has declined payment.

FOR THE BROTHERHOOD:

(SGD.) P. M. MANDZIAK
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. W. Coughlin – Manager Labour Relations, Montreal
J. B. Bart – Labour Relations Officer, Montreal
M. C. Darby – Coordinator Transportation, Montreal

And on behalf of the Brotherhood:

P.M. Mandziak – General Chairman, St. Thomas, Ontario

AWARD OF THE ARBITRATOR

The material establishes that train 375 was forced to return to Capreol because of an air brake problem. As a result of the subsequent delay while repairs were effected, it became clear that Locomotive Engineer Krystia would be eligible to book off for rest at some point prior to the completion of the straight-away run to Foleyet. In fact the grievor sent word to the dispatcher that he would book off, as would be his right after eleven hours of service. This is reflected in the following passage from his own evidence:

At 0055 Yardmaster phoned me and told me the dispatcher would like to know if I would continue to Foleyet if I got my air. I replied when my hours were in, I was done, since we had work to do on the line I knew we could not reach Foleyet under 11 hours. At 01:25 Yardmaster informed me I was cancelled.

It is well established that employees are not guaranteed, by virtue of a call, to complete the contemplated tour of duty. As noted in **CROA 1071**, employees are nevertheless protected by receiving payment in accordance with their call, even though the run may not proceed as contemplated.

That is what transpired in this case. It appears to the Arbitrator that because of the locomotive failure the availability of the grievor to complete the run as scheduled became in doubt, and indeed he confirmed to the dispatcher that he would be booking off prior to the completion of the run. In these circumstances, consistent with the obvious intention of article 16.1 of the collective agreement, it was within the discretion of the Company to cancel the Locomotive Engineer and substitute another employee, provided, of course, that the grievor be compensated in keeping with the article, as was done. It may be noted that the result of this interpretation is not inconsistent with that found in **CROA case 997**, albeit that award involved a different collective agreement. For the foregoing reasons the grievance is dismissed.

(signed) MICHEL G. PICHER
ARBITRATOR